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In re Application of OLSSON et al
U.S. Application No.: 09/297,798
Int. Application No.: PCT/SE97/01854
Int. Filing Date: 06 November 1997
Priority Date: 06 November 1996
Attorney Docket No.: SG 99127
For: METHOD AND APPARATUS FOR
DETERMINING INDIRECTLY THE
CONCENTRATION OF A SPECIFIC
SUBSTANCE IN THE BLOOD

DECISION ON PETITION

UNDER 37 CFR 1.137(b)

This is in response to applicants' "Petition for Revival of an International Application for Patent Designating the U.S. Abandoned Unintentionally Under 37 CFR 1.137(b)" filed 08 March 2001.

BACKGROUND

On 06 November 1997, applicants filed international application PCT/SE97/01854, which claimed priority of an earlier Sweden application filed 06 November 1996. A copy of the international application was communicated to the USPTO from the International Bureau on 14 May 1998. A Demand for international preliminary examination, in which the United States was elected, was filed on 04 June 1998, prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 06 May 1999.

On 06 May 1999, applicants filed national stage papers in the United States. The submission included, *inter alia*, a Transmittal Letter, a copy of the international application, and the basic national fee required by 35 U.S.C. 371. The submission did not include an oath or declaration as required by 35 U.S.C. 371(c)(4).

On 14 June 1999, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905), which set a one month period for response.

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On 01 March 2000, the DO/EO/US mailed a Notification of Abandonment (Form PCT/DO/EO/909) indicating that the present application is abandoned for failure to timely respond to the Notification of Missing Requirements within the time period set therein.

On 13 March 2000, applicants filed a petition under 37 CFR 1.181 to withdraw the holding of abandonment based on a purported failure to receive the Notification of Missing Requirements.

On 14 June 2000, the PCT Legal Office of the USPTO dismissed the 13 March 2000 petition on grounds that applicants had not provided sufficient proof of the alleged failure to receive the Notification of Missing Requirements.

On 08 March 2001, applicants filed the present petition under 37 CFR 1.137(b). The petition states that it is accompanied by a proper response, the petition fee set forth in 37 CFR 1.17(m), and a statement that "the entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional."

DISCUSSION

Under 37 CFR 1.137(b), a petition requesting that an application be revived on the grounds of unintentional abandonment must be accompanied by: (1) the required reply unless previously filed, (2) the petition fee as set forth in 37 CFR 1.17(m), (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional, and (4) a terminal disclaimer if the application was filed before 08 June 1995.

With regard to item (1), applicants have provided an acceptable reply.

With regard to item (2), the check for \$1,240.00 to cover the required petition fee was returned unpaid due to a stop payment.

With regard to item (3), applicants have provided the required statement.

With regard to item (4), because the international application was filed after 08 June 1995, no terminal disclaimer is required.

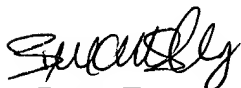
CONCLUSION

Because applicants have failed to provide the required petition fee, the petition under 37 CFR 1.137(b) is **DISMISSED** without prejudice.

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If reconsideration on the merits of this petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include: a cover letter entitled "Renewed Petition Under 37 CFR 1.137(b)", the required \$1,240.00 petition fee, and a \$50.00 returned check processing fee (see 37 CFR 1.21(m)).

Please direct further correspondence with respect to this matter to the Assistant Commissioner for Patents, Box PCT, Washington, DC 20231, and address the contents of the letter to the attention of the PCT Legal Office.



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